

ADVISORY OPINION 93-013

Any advisory opinion rendered by the registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is required. KRS 121. 135(4).

July 26, 1993

Mr. David J. Wilkerson, CPA
Cotton and Allen, PSC
First Trust Centre
200 South Fifth Street, Suite 201 S
Louisville, Kentucky 40202

Dear Mr. Wilkerson:

Thank you for contacting the Registry. Because you have signed your letter in your capacity as treasurer for the Campaign Fund to Re-elect Dave Armstrong County Judge Executive, I am answering your questions as applicable to the candidate for whom you are treasurer. Otherwise, I could not answer your question, since KRS 121.125 requires that those asking for advisory opinions identify themselves as the person to be bound by the advisory opinion or the agent of that person.

The facts of your question may be stated as follows:

Dave Armstrong is a successful 1993 primary campaign candidate for Jefferson County Judge Executive. He anticipates running for re-election to the office Jefferson County Judge Executive in the 1993 general election. Dave Armstrong has received or expects to receive contributions for the 1993 primary after the date of the primary.

Your question is in three parts and may be stated as follows:

1. May a primary campaign accept as a timely contribution a check mailed in an envelope and post-marked May 23, 1993, but not actually received by the treasurer for deposit until May 27, 1993, some two (2) days after the primary election.
2. May a primary candidate accept a check from a contributor on election night, but after the banks have closed? He deposits the check several days after that because he inadvertently misplaced the check. and
3. The third question restates the first question as applied to a general election candidate.

The answer to your question is as follows:

1. In the first part of your question, give the specific facts, the contribution is a primary contribution. The Registry would judge this question on a reasonable practices standard. The exact facts would come to light typically in either a Registry audit or as a result of a complaint

by an outside party. Here, given the exact facts, the Registry would find this contribution a timely primary contribution because the contributor mailed the check in a timely manner.

2. The second example is not a timely acceptance. The Registry has ruled consistently that this sort of acceptance is untimely. The candidate should send the check back to the contributor. In this situation, the several days creates an impermissible gap between receiving the check and depositing the check.
3. This question applies the question outlined in paragraph one to a general election candidate. Here, the contribution would be considered a contribution to the candidate's general election campaign.

This opinion is based upon the course of action outlined in your letter. If you should have any more questions, please give us a call. Thank you.

Sincerely,

Timothy E. Shull
General Counsel

TES/dt